

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Steve Podkulski

v.

Civil No. 11-cv-102-JL

Jane Doe et al.

O R D E R

Before the court is pro se plaintiff Steve Podkulski's complaint (doc. no. 1), which asserts claims against officers and supervisors at the Hillsborough County Department of Corrections ("HCDC"), including Superintendent James O'Mara; six HCDC John and Jane Doe officers and sergeants; HCDC Lt. Robinson, first name unknown ("FNU"); HCDC Officer FNU Barbara; HCDC Officer FNU Hujsak; and HCDC Sgt. FNU Gordon. The matter is before the court for preliminary review to determine if Podkulski has stated a claim upon which relief can be granted. See 28 U.S.C. § 1915A; United States District Court, District of New Hampshire Local Rule ("LR") 4.3(d)(2) (inmate complaints and amendments are forwarded to the magistrate judge for preliminary review).

For reasons stated in the Report and Recommendation issued on this date, the court orders service of the excessive force

and retaliation claims against Officer FNU Barbara and Sgt. FNU Gordon in their individual capacities.

In addition, the court has determined that Podkulski has stated plausible claims against: (1) a John Doe officer and Jane Doe sergeant who ordered Podkulski to sleep on the top bunk on November 17, 2010; and (2) any presently unnamed officer who refused to clean up human waste in Podkulski's cell from November 21 through November 24, 2010. If Podkulski files a proposed complaint amendment within 60 days of the date of this Order, providing the names of the presently unnamed officers allegedly liable for these actions, which specifically describes all facts relating to their conduct that Podkulski believes renders them liable, the court will review the proposed amendment and may direct service of the complaint or recommend dismissal of those claims, as necessary.

Conclusion

The court issues the following Order:

1. Podkulski is granted leave, within 60 days of the date of this Order, to file a proposed complaint amendment:

A. Naming the HCDC officers who Podkulski believes are liable for ordering him to sleep on the top bunk on

November 17, 2010, after Podkulski told them that he was prone to seizures; and

B. Naming all HCDC officers who Podkulski believes are liable for refusing his request to clean up feces and urine in his cell from November 21 through November 24, 2010.

2. In the proposed complaint amendment to be filed within 60 days of the date of this Order, Podkulski shall state with specificity the facts that demonstrate how each officer named therein is allegedly liable to Podkulski on those claims. Podkulski's failure to file an amendment as directed may result in a recommendation that the court dismiss those claims.

3. The clerk's office is directed to prepare and issue summonses for HCDC Sergeant Gordon and HCDC Officer Barbara, at the Hillsborough County House of Corrections, 445 Willow Street, Manchester NH. The clerk's office shall forward to the United States Marshal for the District of New Hampshire (the "U.S. Marshal's office"): the summonses; the complaint (doc. no. 1); the Report and Recommendation issued on this date; and this Order. Upon receipt of the necessary documentation, the U.S. Marshal's office shall serve process on each defendant. See Fed. R. Civ. P. 4(c)(3). Defendants are instructed to answer or

otherwise plead within twenty-one days of service. See Fed. R. Civ. P. 12(a)(1)(A).

4. Podkulski is instructed that all future pleadings, written motions, notices, or similar papers shall be served directly on defendants by delivering or mailing the materials to them or their attorney(s), pursuant to Fed. R. Civ. P. 5(b).

SO ORDERED.



Landya McCafferty
United States Magistrate Judge

December 20, 2011

cc: Steve Podkulski, pro se

LBM:nmd